IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PEITION NO.2747 OF 2005

Shri Ashok Ganu Shelke. ...Petitioner.

Versus

State of Maharashtra & Ors. ...Respondents.

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Mr. P.B. Naiknaware for the Petitioner.
Mrs. P.M. Thakur, AGP for Respondent No.1.
Mr.G. S. Hegde for Respondent No.2.
Mr.S. I. Jaykar for Respondent No.5.

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CORAM : KSHITIJ R. VYAS, C.J. &
DR. D.Y. CHANDRACHUD, J.

April 27, 2006.

ORAL JUDGMENT (Per Dr. D.Y. Chandrachud, J.):

In 1970, the ancestral land of the Petitioner and his Joint Family, including erstwhile Survey Nos.80, 89/2, 86/2 (part), 87/12 (1), 87/6(2), 87/1/2, 87/1/4, 91/1 and 91/2 from village Asudgaon in the Taluka of Panvel in the District of Raigad was acquired for the purposes of development of New Bombay. The Second Respondent is a New Town Development Authority for Navi Mumbai under Section 113(3A) of the Maharashtra Regional and Town Planning Act, 1966. Arising out of the acquisition of lands

for the Navi Mumbai Project, the State Government formulated a rehabilitation scheme for allotment of developed land to project affected persons under Government Resolutions dated 6th March 1990 and 28th October 1994. This scheme is popularly known as the “12.5 percent Scheme”. In the reply filed in these proceedings on behalf of the Second Respondent, it has been stated that under the area earmarked for allotment of land under the 12.5 percent Scheme, the Petitioner was eligible for allotment of land admeasuring 2825 sq.mtrs. against land acquired from village Asudgaon. Out of the aforesaid land to which the Petitioner is entitled under the 12.5 percent Scheme, a plot admeasuring 400 sq.mtrs. has been allotted in village Asudgaon and it has been stated that the Second Respondent is ready and willing to allot the remaining area of land in a linkage sector in Kamothe node, like other project affected persons of Asudgaon village. In these proceedings the Petitioner seeks to assert that all the land that must be allotted to the Petitioner must be necessarily from Sector-5, New Panvel. In fact, the Petitioner seeks the allotment of plot No.46 in Sector-5, New Panvel and the cancellation of the plot

allotted to the Fifth Respondent.

2. In the affidavit in reply that has been filed in these proceedings, CIDCO has clarified that after the issuance of the Government Resolution dated 6th March 1990 which spelt out the terms for rehabilitation of project affected persons under the 12.5 percent Scheme, a number of meetings were held by the State Government with representatives of project affected persons. At a meeting held on 17th September 1998, at which project affected persons were represented by a Member of Parliament, three MLAs respectively from Belapur, Panvel and Alibag and other representatives, it was decided that lands for allotment under the 12.5 percent Scheme should be identified and selected by CIDCO in consultation with the representatives of PAPs. Accordingly, lands for allotment under the 12.5 percent Scheme at Panvel and Uran Talukas were decided in consultation with these representatives and came to be approved by the Board of Directors of CIDCO on 26th June 1996. In the reply it has been stated that initially, allotment of land under the 12.5 percent scheme is made

as far as possible within the villages where lands were acquired, but considering the area required for allotment of land under the 12.5 percent scheme, some linkage sectors in nearby villages were identified in consultation with representatives of PAPs. Hence, the linkage sector for village Asudgaon is Kamothe node where other PAPs of Asudgaon village have been offered land under the 12.5 percent scheme. On 9th March 2005, the Marketing Manager of the Second Respondent informed the Petitioner that plot No.46 in Sector-5 of New Panvel was alloted to the Fifth Respondent which is a Co-operative Housing Society. In the reply, CIDCO has specifically denied the contention of the Petitioner that he is in possession and occupation of the plot. The contention of the Petitioner that he and his family have made an encroachment on land in Sector -5, that he has made an application for regularisation of an unauthorised structure situated in the acquired land and for allotment of additional land admeasuring 4825 sq.mtrs from Plot No.46 has been denied in the reply.

3. We have heard Counsel for the parties. There is no dispute about the fact that the Petitioner has been found eligible for allotment of land admeasuring 2825 sq.mtrs against land which was acquired from village Asudgaon. Of this, CIDCO has agreed to provide a plot admeasuring 400 sq.mtrs. in village Asudgaon which has already been allotted under the 12.5 percent scheme. CIDCO is ready and willing to allot the remaining area in Kamothe node. There is merit in the submission which has been urged on behalf of the Second Respondent that PAPs whose lands have been acquired cannot insist upon the allotment of a particular plot of land or land in a particular locality of their choice. Project Affected Persons whose lands were acquired under the Land Acquisition Act, 1894, read with the Maharashtra Regional and Town Planning Act, 1966 were entitled to the payment of compensation which is the normal mode recognised by the law for recompense to a the person whose lands are acquired. The 12.5 percent scheme, however, was an additional means for providing rehabilitation to PAPs. The lands were acquired in the present case for the development of the township of Navi Mumbai. The

lands which have been acquired have been or, as the case may be, are being put to that use. Planned development would not be possible if PAPs were to insist that the lands which are to be allotted to them under the 12.5 percent scheme should be from the very same village from which the lands were acquired. Therefore, CIDCO is justified in contending that while initially an attempt is made, where practicable and feasible to allot land within the same villages under the 12.5 percent scheme, but considering the area required for allotment, certain linkage sectors were identified in the nearby villages. Kamothe node in which the Petitioner is to be allotted the balance of the land is stated to be near Asudgaon village. The Petitioner does not have any lawful claim to insist that land should be allotted within Asudgaon village alone.

4. The view which we take finds support in a judgment of a Division Bench of this court in **Ganpat Bama Patil vs. City & Industrial Development Corporation of Maharashtra**, Writ Petition 1756 of 1994 decided on 25th June 2004.

5. In these circumstances, we do not find any basis in law or in equity to support the claim urged on behalf of the Petitioner.

6. The petition is accordingly dismissed.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.